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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/323,135	06/01/1999	CHRISTIAN LAROQUE	Q54622	8820
23373 7590 12/01/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER MOORE JR, MICHAEL J				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/323,135	<b>Applicant(s)</b> LAROQUE ET AL.
<b>Examiner</b> MICHAEL J. MOORE, JR.	<b>Art Unit</b> 2419

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-23 and 25.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Michael J. Moore, Jr./  
Examiner, Art Unit 2419

## Continuation of 3. NOTE:

Regarding the amendments made to claims 17-21 by Applicant, these amendments raise new issues as the scope of these claims has been changed, which requires further consideration and/or search. Specifically, upon further review of Applicant's specification, there was no support found for "a computer program embodied on a microprocessor". While page 8, lines 21-28 of Applicant's specification may disclose "an interpreter 14" that comprises "a microprocessor associated with the program", there is no disclosure that "a computer program" (assumed to correspond to the process of Figure 2) is stored, encoded, or otherwise "embodied" on "a microprocessor" of the interpreter 14. It is therefore held that this language does not overcome the previous rejections of claims 17-21 under 35 U.S.C. 112, 1<sup>st</sup> paragraph and 35 U.S.C. 101. Examiner suggests that Applicant cancel claims 17-21 to further prosecution, as it does not appear to Examiner that there is a remedy for these claims in light of the originally filed disclosure.

Regarding claim 1, Applicant argues that Dunn does not teach "an interpreter producing a signaling configuration upon receiving an order to send a signaling message, wherein a type of signaling channel is selected from the signaling channels accessible to the coupler and the signaling configuration produced depends on the selected type of signaling channel" as claimed.

However, as provided in the previous Office Action, Dunn teaches processor 5 (interpreter) of switch 1 of Figure 1 that receives a request (order) to establish a connection from originating station 25, analyzes the digits of the call request, determines whether to route the call either over the Internet or the toll network based on the analysis, and then generates appropriate call setup signaling (configuration) for either the toll network (conventional call setup) or the Internet (IAM message) as spoken of on column 4, lines 5-18.

As Applicant noted, the signaling channel utilized is associated with the CCS7 network. In the teachings of Dunn, the CCS7 signaling channel is the type of channel selected as it is the signaling channel "accessible" to originating toll access switch 1. Further, the IAM signaling used is native (dependent) to the CCS7 channel being used.

It is held that Dunn teaches the above limitations in question.

Regarding claim 1, Applicant further argues that Dunn does not teach "a receiver for adding a receive flag to a received signaling message". Applicant further argues that a switch ID field is not a receive flag. Applicant further argues that one of skill in the art would not confuse an ID of a switch with a receive flag.

However, Dunn does teach terminating toll switch 2 (receiver) that in response to receipt of initial address message (IAM) 40, returns an IAM acknowledgement containing the same call ID as well as an added field IP 2 47 (flag) indicating the IP address of the terminating toll switch 2 as shown in Figure 1 and spoken of on column 3, lines 45-50. It is held that the added IP 2 field may be considered "a receive flag" since it is added to a received signaling message.

Regarding claim 1, Applicant further argues that there does not appear to be a relationship between switching network 6 and the messages received by the switch 2.

However, Dunn teaches network 6 (coupler) of switch 1 used for establishing connections between the PSTN and the Internet or toll network and a terminating access switch 2 as spoken of on column 2, lines 53-55. It is held that there is a communication relationship between the originating switch 1 containing network 6, and the terminating access switch 2 (receiver).

Applicant further argues that Dunn does not teach "an interpreter producing a signaling configuration upon receiving an order to send a signaling message ... wherein the order is a predetermined constant character string. Applicant further argues that the dialed digits of a call in Dunn are neither predetermined nor constant. Applicant further argues that the dialed digits are dynamic and different depending on the number being called.

However, as Applicant noted, Dunn teaches that "dialed information, such as one or more preliminary digits or symbols, can be used to specify that a particular call or series of calls are to be routed over the Internet, or are to be routed over the telephone network". Therefore, the detection of particular (predetermined) preliminary digits or symbols allows the proper routing of a call.

Further, it is held that the dialed digits intended for a particular terminating station (such as terminating station 26 of Figure 1) would constitute a "predetermined constant character string" as typically these dialed digits are assigned to particular terminating stations. It is held that one of ordinary skill in the art would realize that dialed digits corresponding to a particular call from an originating station to a terminating station may be considered "a predetermined constant character string", as the assigned digits are used to identify how to reach the intended recipient and complete the call.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Further, Applicant argues that Dunn and Park do not teach "wherein the receive flag is an internal flag of the switch and is not transmitted with the signaling message from the switch".

However, while Dunn does not teach "a receiver for adding a receive flag to a received signaling message" where "the receive flag is an internal flag of the switch and is not transmitted with the signaling message from the switch", Park was cited to teach this deficiency. As provided in the previous Office Action, Park teaches an apparatus for a switching system where internal flags used for transmission and reception of data are written and read to/from a common memory between a host processor 21 and a CPU 23 as spoken of on column 4, lines 2-18. These internal flags are used to instruct the outputting of particular announcement messages to a time switch 28 as spoken of on column 5, lines 36-44. It is held that these flags are internally exchanged such that other external messaging (separate from internal message exchange) may occur.

Further, while Dunn does not explicitly disclose the usage of internal flags for connection establishment and data transmission by the disclosed access switches, it is held that it would have been obvious to someone of ordinary skill in the art, given the internal flag use teachings of Park, to use additional internal signaling (using internal flags) within the access switches of Dunn in order to allow effective reception, processing, and transmission of data via internal switch components as spoken of on column 4, lines 2-18 of Park.

